

UNITED STATES BANKRUPTCY COURT

Eastern District of California

Honorable Michael S. McManus
Bankruptcy Judge
Sacramento, California

September 23, 2013 at 2:00 p.m.

1. 13-25215-A-13 SHARILYNN BONNARD MOTION TO
JPJ-2 DISMISS CASE
9-3-13 [49]

- ☐ Telephone Appearance
- ☐ Trustee Agrees with Ruling

Tentative Ruling: The motion will be granted and the case will be dismissed.

The debtor proposed a plan within the time required by Fed. R. Bankr. P. 3015(b) but was unable to confirm it because the court dismissed the motion to confirm the plan. The debtor thereafter failed to promptly propose a modified plan and set it for a confirmation hearing. This suggests that the debtor either does not intend to confirm a plan or does not have the ability to do so. This would be cause for dismissal. See 11 U.S.C. § 1307(c)(1) & (c)(5).

2. 13-27119-A-13 GUILLERMO/LETICIA MOTION TO
JPJ-1 CARRASCO DISMISS CASE
8-28-13 [26]

- ☐ Telephone Appearance
- ☐ Trustee Agrees with Ruling

Tentative Ruling: The motion will be conditionally denied.

The debtor proposed a plan within the time required by Fed. R. Bankr. P. 3015(b) but was unable to confirm it because the court sustained an objection to its confirmation. The debtor thereafter failed to promptly propose a modified plan and set it for a confirmation hearing. This suggests that the debtor either does not intend to confirm a plan or does not have the ability to do so. This would be cause for dismissal. See 11 U.S.C. § 1307(c)(1) & (c)(5).

However, after this dismissal motion was filed, the debtor filed, served, and set for hearing a motion to confirm a modified plan. The motion will be heard on October 21. On condition that the debtor's motion is granted and the modified plan is confirmed at the hearing on October 21, 2013, the case will remain pending. If it is not granted, the petition will be dismissed on the trustee's further ex parte application. The failure to confirm a modified plan within a reasonable time will cause delay to the prejudice of the creditors. See 11 U.S.C. § 1307(c)(1).

September 23, 2013 at 2:00 p.m.

3. 10-34924-A-13 STEVEN/LORI HANSEN
JPJ-2

MOTION TO
DISMISS CASE
8-15-13 [52]

- ☐ Telephone Appearance
- ☐ Trustee Agrees with Ruling

Tentative Ruling: The motion will be conditionally denied.

The debtor proposed and confirmed a plan. That plan, however, had a duration of 36 months with the proviso that up to an additional 6 months could be taken if necessary to pay the dividends promised by the plan. The debtor is now in the 39th month of the plan and it will take a total of 67 months to pay the required dividends. When the claims filed make it impossible for the debtor to complete the plan within the plan's stated duration, the debtor is required to move to modify the plan within 90 days of the service of the Notice of Filed Claims. See Local Bankruptcy Rule 3007-1(d)(5). That notice was served on April 19, 2011. The debtor failed to make the required motion.

This suggests that the debtor either does not intend to confirm a modified plan or does not have the ability to do so. This would be cause for dismissal. See 11 U.S.C. § 1307(c)(1) & (c)(5).

However, after this dismissal motion was filed, the debtor filed, served, and set for hearing a motion to confirm a modified plan. The motion will be heard on October 15. On condition that the debtor's motion is granted and the modified plan is confirmed at the hearing on October 15, 2013, the case will remain pending. If it is not granted, the petition will be dismissed on the trustee's further ex parte application. The failure to confirm a modified plan within a reasonable time will cause delay to the prejudice of the creditors. See 11 U.S.C. § 1307(c)(1).

4. 10-43036-A-13 FRANCISCO/YOSELIN SONGCO
JPJ-1

MOTION TO
DISMISS CASE
8-15-13 [41]

- ☐ Telephone Appearance
- ☐ Trustee Agrees with Ruling

Tentative Ruling: The motion will be conditionally denied.

The debtor proposed and confirmed a plan. That plan, however, had a duration of 36 months with the proviso that up to an additional 6 months could be taken if necessary to pay the dividends promised by the plan. The debtor is now in the 37th month of the plan and it will take a total of 59 months to pay the required dividends. When the claims filed make it impossible for the debtor to complete the plan within the plan's stated duration, the debtor is required to move to modify the plan within 90 days of the service of the Notice of Filed Claims. See Local Bankruptcy Rule 3007-1(d)(5). That notice was served on June 29, 2011. The debtor failed to make the required motion.

This suggests that the debtor either does not intend to confirm a modified plan or does not have the ability to do so. This would be cause for dismissal. See 11 U.S.C. § 1307(c)(1) & (c)(5).

However, after this dismissal motion was filed, the debtor filed, served, and set for hearing a motion to confirm a modified plan. The motion will be heard on October 28. On condition that the debtor's motion is granted and the

modified plan is confirmed at the hearing on October 28, 2013, the case will remain pending. If it is not granted, the petition will be dismissed on the trustee's further ex parte application. The failure to confirm a modified plan within a reasonable time will cause delay to the prejudice of the creditors. See 11 U.S.C. § 1307(c)(1).

5. 10-51370-A-13 ANDREW/JANICE MARLOW MOTION TO
JPJ-1 DISMISS CASE
8-14-13 [28]

- ☐ Telephone Appearance
- ☐ Trustee Agrees with Ruling

Tentative Ruling: The motion will be conditionally denied.

The debtor proposed and confirmed a plan. That plan, however, had a duration of 36 months with the proviso that up to an additional 6 months could be taken if necessary to pay the dividends promised by the plan. The debtor is now in the 34th month of the plan and it will take a total of 125 months to pay the required dividends. When the claims filed make it impossible for the debtor to complete the plan within the plan's stated duration, the debtor is required to move to modify the plan within 90 days of the service of the Notice of Filed Claims. See Local Bankruptcy Rule 3007-1(d)(5). That notice was served on May 29, 2011. The debtor failed to make the required motion.

This suggests that the debtor either does not intend to confirm a modified plan or does not have the ability to do so. This would be cause for dismissal. See 11 U.S.C. § 1307(c)(1) & (c)(5).

However, after this dismissal motion was filed, the debtor filed, served, and set for hearing a motion to confirm a modified plan. The motion will be heard on October 15. On condition that the debtor's motion is granted and the modified plan is confirmed at the hearing on October 15, 2013, the case will remain pending. If it is not granted, the petition will be dismissed on the trustee's further ex parte application. The failure to confirm a modified plan within a reasonable time will cause delay to the prejudice of the creditors. See 11 U.S.C. § 1307(c)(1).

6. 10-45172-A-13 ROBIN/KIM EISEMANN MOTION TO
JPJ-3 DISMISS CASE
9-5-13 [64]

- ☐ Telephone Appearance
- ☐ Trustee Agrees with Ruling

Tentative Ruling: The motion will be granted and the case will be dismissed.

The confirmed plan seeks to "strip off" a completely under-collateralized second priority home mortgage. To accomplish this, the debtor must file a motion pursuant to 11 U.S.C. § 506(a) as interpreted by the Ninth Circuit in In re Zimmer, 313 F.3d 1220 (9th Cir. 2002) and In re Lam, 211 B.R. 36 (B.A.P. 9th Cir. 1997). The debtor filed and served such a motion on the holder of the mortgage and prevailed. However, despite being required by the court to lodge an order granting the valuation motion, this was not done timely. Consequently, the plan cannot be consummated as it is confirmed - the second mortgage will remain in place because it has not been stripped from the debtor's home. This infeasibility of the plan is cause for dismissal.

7. 12-20773-A-13 LADANIEL/GRETCHEN KEY MOTION TO
JPJ-2 DISMISS CASE
8-28-13 [78]

- ☐ Telephone Appearance
- ☐ Trustee Agrees with Ruling

Tentative Ruling: The motion will be granted and the case will be dismissed.

The debtor has failed to pay to the trustee approximately \$2,380 as required by the proposed plan. The foregoing has resulted in delay that is prejudicial to creditors and suggests that the plan is not feasible. This is cause for dismissal. See 11 U.S.C. § 1307(c)(1).

8. 09-26092-A-13 GABRIELA GALLEGOS MOTION TO
JPJ-1 DISMISS CASE
9-4-13 [55]

- ☐ Telephone Appearance
- ☐ Trustee Agrees with Ruling

Tentative Ruling: The motion will be granted and the case will be dismissed.

The plan has a duration of 60 months. The debtor is now in her 53rd month under the plan. Because a claim has been filed by a secured creditor that is higher than assumed by the plan, and because the plan requires that this claim be paid in full, it will take 73 to perform the plan. Local Bankruptcy Rule 3007-1(d) requires that a plan be modified or claim(s) be objected to when the plan is no longer feasible in light of the claims filed by or on behalf of creditors. Despite a reasonable opportunity to do so, the debtor has not sought to modify the plan.

This suggests that the debtor either does not intend to confirm a modified plan or does not have the ability to do so. This would be cause for dismissal. See 11 U.S.C. § 1307(c)(1) & (c)(5).